

203-011275

FMC Agreement  
Australia/United States  
Discussion Agreement

No. 203-\_\_\_\_\_  
(First Edition)

RECEIVED  
Title Page

Australia/United States Discussion Agreement  
(First Edition)



Table of Contents

	<u>Page</u>
1. Name of the Agreement .....	1
2. Purpose of the Agreement .....	1
3. Parties to the Agreement .....	1
4. Geographical Scope of the Agreement .....	1
5. Overview of Agreement Authority .....	2
6. Officials of Agreement and Delegation of Authority .....	3
7. Membership, Withdrawal, Readmission and Expulsion .....	3
8. Voting .....	4
9. Duration and Termination of Agreement .....	5
10. Confidentiality .....	5
11. Reservation of Rights; Independent Action .....	5
12. Expenses .....	5
13. Arbitration .....	6
14. Miscellaneous .....	7

Appendix A. Parties to the Agreement

## AUSTRALIA/UNITED STATES DISCUSSION AGREEMENT

### 1 -- NAME OF THE AGREEMENT

The full name of this Agreement is the Australia/United States Discussion Agreement.

### 2 -- PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to promote service, stability and efficiency in the outwards liner cargo shipping trade from Australia to the United States ("the trade") by:

- (a) authorizing the parties to discuss and exchange information with regard to matters of mutual interest and concern in the trade, with a view, inter alia, to reaching a non-binding consensus upon rates, rules, terms and conditions of common carrier service in the trade;
- (b) further authorizing the parties to give effect to any consensus arrived at under paragraph (a); and
- (c) authorizing the parties to agree upon a common position with respect to the matters referred to in paragraph (a) to present to various statutory corporations, boards and shipper bodies in connection with the negotiation of minimum levels of service, the negotiation and award of carrier designations to carry cargoes in the trade, and related matters.

### 3 -- PARTIES TO THE AGREEMENT

The names and addresses of the parties to this Agreement are set out in Appendix A.

### 4 -- GEOGRAPHICAL SCOPE OF THE AGREEMENT

This Agreement covers the trade from ports and points in Australia, on the one hand, to ports and points in the United States (including Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands), on the other hand.

## 5 -- OVERVIEW OF AGREEMENT AUTHORITY

5.1 The parties are authorized, but not required, to meet, to exchange information and data, to consider and discuss and to reach consensus upon the following matters:

- (a) the rates, charges (including any demurrage, detention and other charges relating to the receiving, handling, storage and delivery of cargo), classifications, terms and conditions applicable to the transportation of cargo in the Trade, service contract rates, charges, terms and conditions, and any rules and regulations applicable to those rates, charges, classifications, terms and conditions;
- (b) Cargo movements, seasonability and other fluctuations of traffic flows and related data bearing on the level and frequency of liner services, including, without limitation, services offered by non-parties, required by shippers both in Australia and the United States;
- (c) Practices in connection with the receipt, carriage, handling and delivery of cargo, including cargo classifications and cargo space accommodations, the operation by the parties and non-parties of vessels, containers, equipment and facilities in the trade, and the centralization of cargo at Australian outports and transshipment of same by feeder vessel, rail or motor carrier, and the parties will abide by the provisions of the Trade Practices Act 1974 (Cth) in reaching any such consensus;
- (d) Political and economic policies affecting the shipment of cargo in the trade; port development, and commercial and governmental practices affecting the carriage of cargo in the trade; and
- (c) any other matter which is necessary to give effect to this Agreement, and which is in conformity with the applicable laws.

5.2 The parties are further authorized:

- (a) to exercise the authority under Article 5.1 in connection with the presentation (jointly or separately) of a common position to any Australian statutory corporation, board or shipper group concerning such matters as the negotiation, award, implementation and designation of carriers to carry cargoes in the trade; and
- (b) to meet with designated shipper bodies and to negotiate upon minimum levels of shipping services, including frequency of sailings, cargo carrying capacity and ports of call.

5.3 The parties may adhere and give effect to any consensus reached under the authority of Article 5.1, but are not required by this Agreement, or by anything done pursuant to this Agreement, to give effect to any such consensus; and no common tariff or service contract shall be published under this Agreement.

5.4 The parties, or any of them, may agree upon any routine administrative matter relating to the operation or implementation of this Agreement.

## 6 -- OFFICIALS OF AGREEMENT AND DELEGATION OF AUTHORITY

6.1 The parties may select an Agreement Chairman, who (or whose nominated representative) shall have the following functions:

- (a) to preside at meetings of the membership;
- (b) to file minutes and other documents as may be required by the rules of the Federal Maritime Commission;
- (c) to apply on behalf of the Members under the Trade Practices Act 1974 (Cth) for the provisional and final registration of the Agreement and of any amendment or associated agreement;
- (d) to give notice of any change in negotiable shipping arrangement or of any other affecting event, as may be required under the Trade Practices Act 1974 (Cth).

6.2 The parties shall jointly nominate a representative authorized to sign on behalf of each party and file this Agreement and any amendments thereto with the Federal Maritime Commission and the National Transportation Agency, which representative may delegate this authority to counsel.

6.3 The parties may also employ administrative personnel, attorneys and other persons to perform services in connection with this Agreement, and otherwise provide for administrative and housekeeping matters.

## 7 -- MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION

7.1 Any vessel operating common carrier by water that regularly operates liner vessels in transportation services in the trade may become a party to this Agreement by signing the Agreement or a counterpart copy thereof, and upon filing, as required by any applicable law, a modification hereof adding such carrier as a new party to this Agreement.

7.2 A party may only be expelled from this Agreement for abandonment of service, or for breach of an obligation of that party under this Agreement, and only in accordance with the following procedure:

- (a) A detailed statement setting forth the reasons for the proposed expulsion shall be furnished by the complaining party, and a copy of that statement submitted to the Federal Maritime Commission;
- (b) The offending party shall have the right to make a statement and to tender documents in its defense at a meeting called to consider the issue;
- (c) Expulsion of the offending party requires a two-thirds majority of the other parties;
- (d) If the offending party submits the matter to arbitration under Article 14 within 14 days of that meeting, the decision to expel that party is suspended pending the decision of the arbitrator.

7.3 A party may withdraw from this Agreement at any time upon written notice to the other parties, upon receipt of which a modification hereof deleting the withdrawing party shall be executed and filed with the appropriate governmental authority or authorities, and the withdrawal of the party shall become effective upon the effectiveness of such modification. Withdrawal does not affect any existing obligation of that party under Article 12 or 13.

## 8 -- VOTING

8.1 This Agreement may be amended or terminated upon the affirmative vote of three-quarters of the parties at a meeting called for that purpose, provided that any party not present at that meeting has been given 48 hours notice of the proposed amendment or termination.

8.2 Except as provided in Articles 7.2 and 8.1, any consensus under this Agreement shall be adopted as far as possible by general agreement without any vote being taken, but if no agreement can be achieved, a consensus may be adopted by a majority vote of the parties.

8.3 Unless a party voting against a consensus under Article 8.2 notifies the other parties, directly or through the Agreement Chairman, to the contrary, it will be assumed that party does not adhere to the consensus.

7.2 A party may only be expelled from this Agreement for abandonment of service, or for breach of an obligation of that party under this Agreement, and only in accordance with the following procedure:

- (a) A detailed statement setting forth the reasons for the proposed expulsion shall be furnished by the complaining party, and a copy of that statement submitted to the Federal Maritime Commission;
- (b) The offending party shall have the right to make a statement and to tender documents in its defense at a meeting called to consider the issue;
- (c) Expulsion of the offending party requires a two-thirds majority of the other parties;
- (d) If the offending party submits the matter to arbitration under Article 14 within 14 days of that meeting, the decision to expel that party is suspended pending the decision of the arbitrator.

7.3 A party may withdraw from this Agreement at any time upon 48 hours written notice to the other parties, and upon providing a copy of that notice to the Federal Maritime Commission. Withdrawal does not affect any existing obligation of that party under Article 12 or 13.

## 8 -- VOTING

8.1 This Agreement may be amended or terminated upon the affirmative vote of three-quarters of the parties at a meeting called for that purpose, provided that any party not present at that meeting has been given 48 hours notice of the proposed amendment or termination.

8.2 Except as provided in Articles 7.2 and 8.1, any consensus under this Agreement shall be adopted as far as possible by general agreement without any vote being taken, but if no agreement can be achieved, a consensus may be adopted by a majority vote of the parties.

8.3 Unless a party voting against a consensus under Article 8.2 notifies the other parties, directly or through the Agreement Chairman, to the contrary, it will be assumed that party does not adhere to the consensus.

8.4 A party which adheres to a consensus for the purposes of Articles 8.2 or 8.3 but which decides, pursuant to Articles 2 and 5.3, no longer to adhere or give effect to that decision shall use its best efforts promptly to notify the other parties, directly or through the Agreement Chairman, of its intention until further notice to discontinue that adherence.

## 9 -- DURATION AND TERMINATION OF AGREEMENT

This Agreement enters into force on the first day it may be lawfully implemented under each of the applicable laws, and shall continue in effect indefinitely unless terminated under Clause 8.1.

## 10 -- CONFIDENTIALITY

Except as may be required under the applicable laws or as otherwise agreed between the parties, no party shall disclose to any person, except its own representatives and its own or this Agreement's attorneys, the view or position of any party on any matter considered under this Agreement.

## 11 -- RESERVATION OF RIGHTS: INDEPENDENT ACTION

Nothing in this Agreement is to be construed:

- (a) as obligating any party to exchange information, to participate in any activity or meeting, to be or not be a party to any other agreement, or to adhere to any position, without its consent;
- (b) as requiring adherence by any party for any period of time to any consensus reached under Articles 5.3 and 8.2; or
- (c) as limiting the right of any party to continue or alter any tariff it publishes or to which it otherwise adheres, any service it provides, or any commercial practice in which it may engage.

## 12 -- EXPENSES

Each party will bear the expenses of its own representatives in connection with this Agreement. All other expenses incurred in the carrying out of this Agreement, including any fees or costs of consultants or other service, will be apportioned as the parties from time to time agree, and in default of agreement in equal shares.

### 13 -- ARBITRATION

13.1 Subject to Article 13.5, a party to this Agreement may refer any question as to the meaning or effect of this Agreement to arbitration by a sole arbitrator in accordance with and subject to this Article and (to the extent that this Article makes no provision) to the UNCITRAL Arbitration Rules. The arbitrator's decision shall be final and is not subject to appeal.

13.2 In determining any such dispute the arbitrator shall apply the laws of New South Wales.

13.3 The appointing and administering body shall be the Australian Chamber of Shipping. The language of the arbitration shall be English and the place of arbitration shall be Sydney in the State of New South Wales.

13.4 The following rules apply to the arbitration:

(a) Except by agreement of the parties to the arbitration there will be no prehearing discovery.

(b) The arbitrator shall decide the matter only on the basis of evidence submitted to him, which evidence shall be supplied to the other parties to the arbitration, who shall be given the opportunity to submit evidence in rebuttal, explanation or mitigation, and to cross-examine any witness.

(c) The cost of the arbitration shall be borne equally by the parties to the dispute, and each party shall be liable to pay its own expenses of the arbitration.

13.5 Article 13.1 does not apply:

(a) If the parties to the dispute or difference agree in writing that it is to be resolved by some other means, and

(b) (where the agreed means involve arbitration or other proceedings outside Australia) if the Australian Minister administering the Trade Practices Act 1974 (Cth) also agrees in writing.

13.6 This Article excludes any right of appeal that a party would otherwise have under Part V of the Commercial Arbitration Act 1984 (NSW), to the full extent permitted by that Act.

13.7 This Article does not affect the jurisdiction of the Federal Maritime Commission under the U.S. Shipping Act of 1984.


14 -- MISCELLANEOUS

In this Agreement "applicable law" means the U.S. Shipping Act 1984, and the Australian Trade Practices Act 1974 (Cth). This Agreement shall be binding upon and enure to the benefit of only the parties hereto.

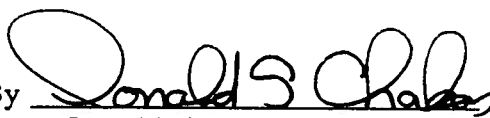
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of March 14, 1990.

HAMBURG-SUDAMERIKANISCHE DAMPFSCIFF-  
FAHRTS-GESELLSCHAFT EGGERT & AMSINCK  
(Columbus Line)

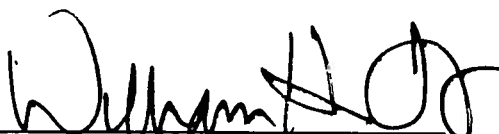
By COLUMBUS LINE, INC., U.S. Agent

By   
Marco Pacella  
Senior Vice President Commercial

ASSOCIATED CONTAINER TRANSPORTATION  
(AUSTRALIA) LTD. (Pace Line)

By   
Donald S. Chakas  
U.S. Executive Vice President

AUSTRALIA-NEW ZEALAND DIRECT LINE

By   
William H. Fort  
Attorney-in-Fact

Australia/United States  
Discussion Agreement

FMC Agreement  
No. 203-RECEIVED  
(First Edition)

Appendix A  
Original  
Page No. A1

APPENDIX A

Parties To The Agreement

The parties to the Australia/United States Discussion Agreement are as follows:

1. Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft  
Eggert & Amsinck (Columbus Line)  
Ost-West Strasse 59  
2000 Hamburg 11, Federal Republic of Germany
2. Associated Container Transportation (Australia) Ltd.  
(Pace Line)  
136 Fenchurch Street  
London EC3M 6DD, England
3. Australia-New Zealand Direct Line, a coordinated  
service pursuant to FMC Agreement No. 207-011144  
6621 East Pacific Coast Highway, 2d Floor  
Long Beach, CA 90803, U.S.A.

APPENDIX A

Parties To The Agreement

The parties to the Australia/United States Discussion Agreement are as follows:

1. Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft  
Eggert & Amsinck (Columbus Line)  
Ost-West Strasse 59  
2000 Hamburg 11, Federal Republic of Germany
2. Associated Container Transportation (Australia) Ltd.  
(Pace Line)  
136 Fenchurch Street  
London EC3M 6DD, England
3. Australia-New Zealand Direct Line, a coordinated  
service pursuant to FMC Agreement No. 207-011144  
456 Montgomery Plaza, 18th Floor  
San Francisco, CA 94104, U.S.A.